

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**WILLIAM D. BALDWIN, JR.,
Petitioner**

VS.

ANTHONY HIMES,
Respondent.

**C.A.No. 05-110 Erie
District Judge McLaughlin
Magistrate Judge Baxter**

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I RECOMMENDATION

_____It is respectfully recommended that the instant *habeas corpus* action be dismissed for Petitioner's failure to prosecute.

II **REPORT**

On April 8, 2005, this Court received a petition for writ of *habeas corpus* from Petitioner William D. Baldwin, Jr., an inmate at the State Correctional Institution at Albion, Pennsylvania; however, Petitioner failed to submit with the complaint either the required filing fee of \$ 5.00 or a motion to proceed *in forma pauperis*. As a result, this Court issued an Order dated April 27, 2005, requiring Petitioner to pay the filing fee or file a motion to proceed *in forma pauperis* status with an accompanying institutional account statement or suffer dismissal of this action for failure to prosecute. To date, no response to this Court's Order has been received and the initial filing fee has not been paid.

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider:

1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4)

whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. *Id.* at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. *Hicks v. Feeney*, 850 F.2d 152 (3d Cir. 1988).

Applying the *Poulis* factors to the present matter, this Court recommends the dismissal of this matter. Since the filing of this matter, Petitioner has taken none of the necessary first steps to prosecute this case. Further, Petitioner has ignored an order by this Court. Petitioner is proceeding *pro se* and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties. Although Petitioner's allegations may state a claim upon which relief could be ultimately be granted, the merits of the claim are impossible to determine at this early stage of the proceedings.

III CONCLUSION

For the foregoing reasons, it is respectfully recommended that this case be dismissed due to Petitioner's failure to prosecute.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. No extensions of time will be granted. Failure to timely file objections may constitute a waiver of any appellate rights.

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge

Dated: August 2, 2005

cc: The Honorable Sean J. McLaughlin
United States District Judge